

## **Remarks**

### **I. Status of claims**

Claims 1-23 and 45-61 were previously canceled. Claims 24 and 36 have been amended. Claims 24-44 are pending.

Claim 24 has been amended to better recite the flat surface of the pallet as temporarily closing the entire open bottom of the mold cavity. This is in response to the suggestion in the office action that claim 24 did not require the flat surface of the pallet to close the entire bottom of the mold cavity. Claim 36 has been amended to remove reference to the integral flange, as recitation of the flange is unnecessary in this claim.

### **II. Claim rejections**

Claims 24, 28 and 35 are rejected under 35 USC 102(a) as being anticipated by DE 100 02 390 (DE '390).

Claims 25-27 are rejected under 35 USC 103(a) as being unpatentable over DE '390 in view of US 5,183,616 to Hedrick.

Claims 36-41 and 43-44 are rejected under 35 USC 103(a) as being unpatentable over DE 196 34 499 (DE '499) in view of US 5,183,616 to Hedrick.

Applicants respectfully traverse each of these rejections.

### **III. Rejection under 35 USC 102(a) in view of DE '390**

Claims 24, 28 and 35 are rejected under 35 USC 102(a) as being anticipated by DE '390. DE '390 does not disclose a pallet having a flat surface that temporarily closes the entire open bottom of the mold cavity as recited in claim 24.

The rejection asserts that the drawing sheet 50 of DE '390 closes the entire bottom of the mold cavity. However, the drawing sheet 50 of DE '390 does not include a flat surface that closes the entire open bottom of the mold cavity. As illustrated in Figure 3 of DE '390, the drawing sheet 50 includes an upright mold ridge 52 that extends into the mold cavity to form a depression 44 with a stopping face 24 and a support surface 22 in the upper surface of the resulting block (see, e.g., page 7, lines 20-25 of the translation). As illustrated in Figures 1 and

8-12, the projection 43 of the block interacts with the stopping face 24 and support surfaces 22 when the blocks are stacked into courses to provide setback between the courses of the blocks.

Due to the mold ridge 52, the drawing sheet 50 of DE '390 does not have a flat surface that closes the entire open bottom of the mold cavity as recited in claims 24, 28 and 35. Therefore, claims 24, 28 and 35 are not anticipated by DE '390.

#### **IV. Rejection under 35 USC 103(a) over DE '390 in view of Hedrick**

Claims 25-27 depend from claim 24 and are patentable along with claim 24. As discussed above, the drawing sheet 50 of DE '390 does not have a flat surface that closes the entire open bottom of the mold cavity. Further, because the depression formed by the mold ridge 52 is necessary in order to provide interaction with the projection 43, there is no teaching or suggestion to remove the mold ridge 52. To do so, as suggested by the examiner in combining it with Hedrick, would defeat the purpose of DE '390. The use of a flat pallet in DE '390 would be contrary to the objectives of that teaching. By not separately distinguishing the claims 25-27, Applicants do not concede the propriety of the rejections thereof, and Applicants reserve the right to file arguments at a later date specifically addressing the dependent claims.

#### **V. Rejection under 35 USC 103(a) over DE '499 in view of Hedrick**

With respect to independent claim 36, DE '499 does not teach or suggest a first converging side wall portion that extends across the entire distance of the mold cavity between two opposed side walls that are adjacent the first side wall. Hedrick also fails to teach or suggest such a construction.

The Advisory Action mailed August 16, 2004 correctly suggests that the plate 4 in DE '499 is used to shape the undercut 20 in the block, so that the plate shapes the ultimate shape of the block. From this, it is concluded that it would have been obvious to make the plate 4 extend across the entire mold cavity so as to create an undercut extending fully across the block "given the correlation of side portion to block shape". Applicants respectfully submit that this conclusion is not supported by DE '499 and is based solely on Applicant's disclosure.

Contrary to what is stated in the Advisory Action, there is no teaching or suggestion in DE '499 that the plate 4 should extend across the entire mold cavity so as to shape the entire side of the block between the opposed plates 2. DE '499 discloses a single embodiment where the

plate 4 extends across only a portion of the mold cavity between the opposed plates 2 so that the resulting undercut 20 extends across only a portion of the block. DE '499 does not contain any disclosure suggesting that the plate should extend across the mold cavity, or that the undercut should extend fully across the resulting block. The conclusion that such a modification would have been obvious can only be based on Applicant's disclosure.

Further, there is no teaching in DE '499 that the undercut 20, which extends across only a portion of the side of the block, is equivalent to a converging side face portion formed by the claimed converging side wall portion. A converging side face on a block permits construction of curved walls from a plurality of those blocks. As a result, the claimed mold assembly permits formation of concrete blocks that can be used to build curved walls. The purpose of the undercuts 20 is not described in DE '499. Yet, since the plate 4 and undercuts 20 extend across only a portion of the block side, the resulting blocks in DE '499 cannot be used to form curved walls since the sides of the block would be straight (except for the undercuts) and would abut against adjacent blocks if the block was arranged in a wall.

As a result, the mold in DE '499 is used to produce a block different from that produced by the claimed mold assembly. Further, there is no teaching in DE '499 of the need to form blocks that can be used to produce curved walls. Since DE '499 discloses production of a different block, there is no teaching in DE '499 that the plate 4 should be modified as suggested by the Examiner as a different block would result.

Therefore, claim 36 is patentable over DE '499 and Hedrick.

Claims 37-41 and 43-44 depend from claim 36 and are patentable along with claim 36 and need not be separately distinguished. By not separately distinguishing the dependent claims, Applicants do not concede the propriety of the rejections thereto, and Applicants reserve the right to file arguments at a later date specifically addressing the dependent claims.

## **VI. Allowable subject matter**

Applicants gratefully acknowledge the indication that claims 29-34 and 42 contain allowable subject matter. As discussed above, the remaining claims are believed to be allowable as well.

## **VII. Conclusion**

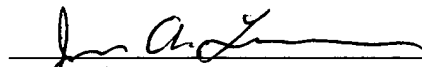
Applicants believe that the claims now pending in this patent application are in immediate condition for allowance. Favorable consideration is respectfully requested. If any further questions arise, the Examiner is invited to contact Applicants' representative at the number listed below.



Date: September 29, 2004

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 322-5300

  
\_\_\_\_\_  
James A. Larson  
Reg. No. 40,443